

LATHROP & GAGE L.C.
William R. Hansen (WH-9446)
Gianfranco G. Mitrione (GM-8168)
Bridget A. Short (BS-4191)
230 Park Avenue, Suite 1847
New York, New York 10169
(212) 850-6220 (tel)
(212) 850-6221 (fax)

Attorneys for Defendant

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

| | |
|------------------------------|----------------------------|
| | X |
| CHAMILIA, LLC, | : |
| | : Civil Action No.: |
| | : 04 CV 06017 (KMK) |
| Plaintiff, | : |
| | : |
| -against- | : |
| | : ECF CASE |
| PANDORA JEWELRY, LLC, | : |
| | : |
| | : |
| Defendant. | : |
| | X |

**SUPPLEMENTAL DECLARATION OF GIANFRANCO G. MITRIONE
IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

GIANFRANCO G. MITRIONE, does hereby declare:

1. I am an associate with the firm of Lathrop & Gage L.C., attorneys for Defendant, Pandora Jewelry, LLC. I am admitted to practice law in the State of New York. I am familiar with all the facts and circumstances in this proceeding.
2. I submit this supplemental declaration pursuant to Rule 56 of the Federal Rules of Civil Procedure in support of defendant's motion for summary judgment. My original declaration dated January 14, 2005 is also submitted to the Court.

3. Attached hereto as Exhibit O are excerpts from the transcript of the deposition of Michael Lund Petersen held on May 11, 2005.

4. Attached hereto as Exhibit P are excerpts from the transcript of the deposition of Knud Hostrup held on April 26, 2005.

5. Attached hereto as Exhibit Q are excerpts from the transcript of the deposition of Kathy L. Shaw-Riley held on May 6, 2005.

6. Attached hereto as Exhibit R are excerpts from the transcript of the deposition of Jeff Julkowski held on May 12, 2005.

7. Attached hereto as Exhibit S are excerpts from the transcript of the deposition of Lisa Whirlow held on May 13, 2005.

8. Attached hereto as Exhibit T is a copy of a letter dated June 9, 2005 from James G. Goggin to Honorable Kenneth M. Karas.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
July 15, 2005



Gianfranco Mitrione
Glanfranco G. Mitrione

**EXHIBIT O to Supplemental Declaration
of Gianfranco G. Mitrione
dated July 15, 2005**

CONFIDENTIAL

Page 1

COPY

1

2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
CHAMILIA, LLC,

5

Plaintiff,) CONFIDENTIAL

6

) vs.) 04 CV 06017

7

PANDORA JEWELRY, LLC,

8

Defendant.

9

10

11

CONFIDENTIAL DEPOSITION OF
MICHAEL LUND PETERSEN
New York, New York
Wednesday, May 11, 2005

12

13

14

15

16

17

18

19

20

21

22

23

Reported by:
Jeremy Frank, MPM
JOB NO. 172664

24

25

CONFIDENTIAL

Page 19

1 **Petersen**

2 **invented this concept of Pandora Jewelry.**

3 Q. Can you describe the jewelry?

4 A. That I can. It is a bracelet that
5 is divided in three sections where it is
6 divided into three sections where the middle
7 one has two movable things, threads, and there
8 is also a thread on the last section. And
9 then there is thread inside the attachment,
10 no, the beads.

11 Q. Okay.

12 A. **Threads in the beads.**

13 Q. Did you invent the Pandora
14 Jewelry?

15 A. No.

16 Q. Who did?

17 A. **Per Enevoldsen.**

18 Q. Let's, when did you first come to
19 the United States?

20 A. **Around '86, I was here from '86 to**
21 **'89.**

22 Q. What were you doing here?

23 A. **I worked by selling Scandinavian**
24 **and Scandinavian and Italian furnitures.**

25 Q. Was that with Mr. Hostrup?

CONFIDENTIAL

Page 27

1 Petersen

2 Did you look for any letters that
3 related to Chamilia?

4 A. We have never gotten any letters
5 as far as I can remember.

Q. I show had you what's been previously marked as Chamilia number 8, I ask you to take a look at that.

9 A. Do you want him to read it all
10 (sic)?

11 Q. Do you recognize that letter?

12 A. It is Pandora's terms and
13 conditions.

14 Q. Could you look at the second page
15 of the letter.

16 Did you send that letter?

17 A. Yes, I have sent that letter.

18 Q. You can turn back to the first
19 page, sir. I would like you to look at the
20 fifth paragraph, could you read the fifth
21 paragraph to yourself.

22 A. Yes.

23 Q. Can you tell me the names of the
24 manufacturers who are referred to in that
25 paragraph?

CONFIDENTIAL

Page 28

1 Petersen

2 A. Pasha, Biagi, you asked who are
3 mentioned so I just mentioned Biaqi.

4 Q. The names of the manufacturers
5 that are referred to.

6 MS. SHORT: Can you please
7 translate what the witness said in
8 response to Mr. Goggin's question? We
9 need to keep the record as clear and
10 precise as possible. Any time the
11 witness provides an answer, you must
12 translate and interpret it to the best
13 of your ability.

14 THE INTERPRETER: He said, "You
15 just have to say that."

16 A. I told you why I mentioned these
17 names here because I tried to look for names
18 but they are not in that paragraph.

19 Q. Correct.

20 What other manufacturers are
21 referring to in that paragraph?

22 A. Pasha, Biagi, Chamilia, Zo Beads.
23 Then a lot of other firms which has appeared
24 but I don't remember the names of those.

25 Q. Okay.

CONFIDENTIAL

Page 52

1

Petersen

2

3

4

5

REDACTED

6

7

8

9

10

11 Q. Can one of your customers sell
12 Pandora beads as well as Troll Beads?

13 MS. SHORT: Objection to form, it
14 is ambiguous. You haven't established
15 who Mr. Lund's customers are.

16 Q. You can answer the question.

17 A. Our customers can sell whatever
18 they want, we don't interfere with whatever
19 they want to sell except those firms that has
20 copied our concept.

21 Q. Those firms were the firms we
22 talked about earlier?

23 A. Biagi, Zo Beads, Chamilia, Pasha,
24 et cetera, et cetera.

25 Q. Other than those companies that

CONFIDENTIAL

Page 53

1 Petersen

2 you just named, who are your competitors in
3 the marketplace?

4 MS. SHORT: Objection as to form.

5 The witness never said those
6 manufacturers are competitors of
7 Pandora.

8 Q. You can answer.

9 A. I don't think we have any
10 competitors besides those who has copied our
11 concepts who all sell their merchandise under
12 Pandora beads, Pandora style beads.

13 Q. Do you mean their marketing refers
14 to Pandora style beads?

15 A. Not to firms themselves but their
16 customers. If you go on line and you look at
17 all the firms we just mentioned, they all
18 write Pandora style beads. And the local
19 advertisements I have seen in the shops states
20 that they have this different lines or marks.
21 The firms we just mentioned that they state
22 that they have those brands and they are all
23 Pandora style beads.

24 Q. Okay.

25 MR. GOGGIN: We can take a break.

CONFIDENTIAL

Page 59

1 Petersen

2 will agree to the words as they appear
3 on the page.

4 MR. GOGGIN: Did you go over the
5 recording with him with that
6 transcript?

7 MS. SHORT: He --

8 MR. GOGGIN: You're stipulating
9 that's an accurate transcription of the
10 recording?

11 MS. SHORT: We have compared the
12 voicemail message to the Exhibit 11 and
13 it is an accurate transcription.

14 MR. GOGGIN: Thank you.

15 Then I'm going to play it and ask
16 you whether this is your voice.

17 (Tape played.)

18 A. Yes, it is my voice.

19 Q. Okay.

20 Who were you speaking to?

21 A. To an answering machine.

22 Q. Who did you call, who was the
23 person that you called?

24 A. To Donna whose one of the owners
25 of the shop. She had been selling our

CONFIDENTIAL

Page 60

1 Petersen
2 merchandise at one point. And since we
3 couldn't reach agreement on the, under which
4 conditions she should sell our merchandise,
5 then she decided to go back and sell
6 Chamilia's merchandise because of since she
7 had been told that you hadn't applied for a
8 patent.

9 So the reason for my call was to
10 inform her that now our pending patent
11 application was, had been publicized and what
12 the consequences of this could be as we have
13 had customers relationship.

14 Q. What do you believe the
15 consequences of publishing a patent
16 application are?

17 A. I think that it is that if we end
18 up getting the patent and we win the case
19 against Chamilia, then she's responsible for
20 some royalties and legal expenses out of the
21 outermost consequence. And I just wanted to
22 inform her that this is how the things are and
23 which is exactly the contrary of what she had
24 been informed about earlier which was the
25 opposite of what she had been told by the

CONFIDENTIAL

Page 61

1 **Petersen**

2 **competitive firm.**

3 Q. What was the name of the shop?

4 A. **Carlos Italian Charm Shop.**

5 Q. Did you ever actually speak with
6 Donna as opposed to the machine?

7 A. No, she asked me only I think she
8 faxed to me if I would be kind enough to send
9 the application, patent application to her,
10 and that my lawyers did the day after.

11 Q. Did you have any other
12 conversations with Donna about this?

13 A. No, not after because she chose
14 not to talk to me, but earlier I had talked
15 several times with her.

16 Q. Can you tell me what those
17 conversations were about?

18 A. It was about she would rather sell
19 our lines than in instead of those she had
20 been selling before, that she got permission
21 to and bought our merchandise. But when we
22 told her that she couldn't advertize in a
23 local paper in Sacramento, then she decided
24 she would rather sell the other merchandise,
25 and then we decided to cut off our business

CONFIDENTIAL

Page 62

1 Petersen

2 relationship. And since our policy in the
3 firm is that we don't sell our merchandise
4 together with people who has copied our
5 concept.

6 Q. Why couldn't she advertize in the
7 local paper in Sacramento?

8 A. Because I had made a poor business
9 agreement with another customer whose Franco
10 Ferini who was one of the first customers we
11 were trading with, and we had promised her she
12 could have exclusive rights for Sacramento if
13 she also obtained a certain number of sales,
14 but she didn't do that completely, therefore,
15 we opened up for the other customer.

16 But when Franco Ferini was a real
17 good customer of ours, used this specific
18 local magazine for an advertisement of our
19 merchandise, we felt it was too much to step
20 on her toes, which I regret today.

21 Q. The name that we have been talking
22 about, Donna, is that a male or female?

23 A. I have only spoken to a lady. The
24 reason I say Donna is it is standing here and
25 I can't remember her name.

CONFIDENTIAL

Page 70

1 Petersen

2 used on a Troll bead bracelet?

3 A. I have heard about that, yes.

4 Q. Can they be?

5 A. Only as far as I know.

6 O. Yes?

7 A. I have never tried it.

8 Q. Have you heard -- strike

9 Will Troll Beads fit on a Pandora
10 bracelet?

11 A. No, they do not

12 Q. Just give me a second

13 Have you ever heard of a company
14 called Nappi Wholesale?

15 A. I have never heard of it.

16 Q. Has Pandora taken any action to
17 stop those companies that are, that you say
18 are manufacturing beads similar to Pandora
19 beads?

20 A. We sent them a notice when our
21 patent application was publicized, and that we
22 have sent to all of those we know who is
23 producing it, and it is many more than I know
24 the names of.

25 Q. Does Pandora Smykkes have a web

CONFIDENTIAL

Page 72

1

Petersen

2

3

4

5

6

7

8

9

10

11

12

13

14

15

Do you know what the word knockoff

means?

16

A. Yes.

17

Q. What does it mean?

18

A. A copy.

19

Q. Does it mean anything else than
just copy?

21

A. Not so far as I know.

22

Q. Do you believe that Chamilia
products are inferior products to Pandora?

24

A. Yes.

25

Q. How are they inferior?

REDACTED

CONFIDENTIAL

Page 73

1 Petersen

2 A. Our quality is far better than
3 theirs in all the stages of production, it is
4 handmade jewelry. And most of theirs are
5 casted. So it is a combination of handmade
6 and casted. Ours are also but we have much
7 more handwork done in our jewelry, therefore
8 our jewelry are much more detailed. If one
9 weighs the bracelets next to them, ours are
10 far heavier, and that is well known in the
11 brands. And that is a well known fact in the
12 field that our jewelries (sic) are superior to
13 the others. And that's not only what we say,
14 but it is well known.

15 That is there is a magazine called
16 Gift Beads which also has a web site where
17 people can discuss, can discuss the
18 experiences there they said our quality is far
19 superior of the other beads and the other
20 trademarks. brands.

21 Q. Your beads, are your beads casted
22 as well?

23 A. Yes, they are casted. But most of
24 our work is handwork. So for an ordinary
25 person if you put beads next to each other.

CONFIDENTIAL

Page 74

1

Petersen

2

they can see that ours are much more detailed

3 than --

4

5

6

7

8

9

10

11

12

REDACTED

13

14

15

16

17

18

19

20

21

22

23

24

25

CONFIDENTIAL

Page 76

1 Petersen

2 You can answer the question if
3 you can.

4 A. I have no copies of what is
5 happening, then they print out some pages
6 which I can read in the airplane. You don't
7 have to keep it because you can always go back
8 and see what remarks people have made.

9 Q. You're saying you have seen
10 remarks about Pandora's products, correct?

11 A. Yes. And now since you are asking
12 me the question of whether our merchandise are
13 superior to Chamilia's, then there are direct
14 comparisons between their merchandise and our
15 merchandise. Where for most people write in
16 there is no doubt that our merchandise are far
17 superior to the others, of better quality.

18 Q. Is there any other site on the
19 internet where you have seen comparisons
20 between Pandora and Chamilia products?

21 A. This is the only place I, we can
22 go in on, but I'm not aware if there are any
23 other sites that compare with other jewelry.

24 Q. Do customers ever return Pandora
25 beads because they have broken?

CONFIDENTIAL

Page 77

1 Petersen

2 A. Of course they do since these are
3 handmade, but it is something that happens
4 very, very seldom.

5 Q. What's a typical defect that you
6 see?

7 MS. SHORT: Objection to the form
8 of the question.

9 Q. You can answer it.

10 A. Our most common complaint is that
11 the thread in on the bracelet has become loose
12 because they are handmade soldered. That is
13 the most common complaint, but it is very
14 seldom that any complaint on the Pandora
15 beads.

16 But our second biggest complaint
17 is that is when the other firms who was copied
18 our concept that their beads are sitting tight
19 now they are getting stuck on our bracelets so
20 you can't unscrew them, that is the second
21 biggest complaint. And those we don't
22 exchange because we have to send them back
23 because our guarantee doesn't cover that.

CONFIDENTIAL

Page 92

1 Petersen

2 A. Less than one handful. And when
3 some people who have sold merchandise without
4 telling so, they have sold our merchandise
5 together with the other merchandise, and then
6 we immediately have stopped the sale to them.
7 And then most of those have chosen to stop
8 selling the others and continued Pandora. But
9 that is something they have chosen all by
10 themselves.

11 Q. Do you keep track of your market
12 share compared to the other companies' market
13 share?

14 A. No.

15 Q. How do you enforce the requirement
16 that your retailers can't carry these
17 competing products?

18 A. Our salespeople visits the shops
19 at least three to four times a year. The
20 shops are keeping an eye on each other and
21 controlling -- the shops, the shops are
22 checking on each other to make sure that
23 nobody can be permitted something which the
24 others cannot be permitted to do. That is our
25 way of policing it, to enforce it.

CONFIDENTIAL

Page 93

1

Petersen

2 Q. One retailer will check on another
3 retailer if they see that the other retailer
4 is selling both, they'll tell Pandora?

5 A. Yes, they do. And also the
6 salespeople for the other lines, they the
7 representative for the other lines are so dumb
8 that they tell the customers that they have
9 opened another customer with their
10 merchandise. They tell one of Pandora's
11 customers that they have already opened
12 another of their customers by selling their
13 lines in the hope that they then will buy it.

14

15

16

17

18

19

REDACTED

20

21

22

23

24

25

CONFIDENTIAL

Page 95

1

Petersen

2

required.

3

Q. Is that because, have you closed a
factory recently?

5

A. No, but we are in the process of
opening a new so we can deliver after the
supply and demand.

8

Q. Do you personally attend trade
shows?

10

A. Only a very few.

11

Q. What's the first trade show that
you can recall attending for Pandora?

13

A. That was when I found out that
Chamilia had copied our beads 100 percent.
That was the reason we won the case, it was
when we had made these beads, it was when
Chamilia had made the beads that we won a
copyright infringement.

19

Q. So that was before September 2003?

20

A. I know it was a San Francisco show
and I think it was in September or August
2003.

23

Q. Have you been to any trade shows
since that lawsuit was over, resolved?

25

A. I have been to three trade shows

**EXHIBIT P to Supplemental Declaration
of Gianfranco G. Mitrione
dated July 15, 2005**

Confidential

1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CASE NO. 04-CV-06017 (KMK)

4 CHAMILIA, LLC,

5 Plaintiff,

6 vs.

7 PANDORA JEWELRY, LLC,

8 Defendant.

COPY

9 ----- x

10 CONFIDENTIAL - ATTORNEYS' EYES ONLY

11
12 VIDEOTAPED DEPOSITION
13 OF
KNUD HOSTRUP

14

15 Taken before Brian Gary Berkowitz,
16 Shorthand Reporter and Notary Public in and for
17 the State of Florida at Large, pursuant to Notice
18 of Taking Deposition filed in the above cause.

19

20 -----

21 44 West Flagler Street
22 Suite 1400
23 Miami, Florida 33130
Tuesday, April 26, 2005
24 9:03 a.m. - 12:55 p.m.
25

Confidential

24

1 reviewed, that you didn't bring with you today?

2 A. No.

3 Q. Are you aware that there was a lawsuit
4 between Pandora and Chamilia before this lawsuit?

5 A. Yes.

6 Q. What do you know about that case?

7 A. I was told that the case has been
8 litigated and -- and that Chamilia was ordered to
9 stop producing the type of beads which infringed
10 on Pandora's copyrighted beads, and that they
11 had -- Pandora was rewarded a sum of money.

12 Q. When were you told that?

13 A. I don't recall.

14 Q. You don't mean recently?

15 A. Not recently, no.

16 Q. Were you involved with that lawsuit at
17 all?

18 A. Not at all.

19 Q. Did you know it was going on at the
20 time?

21 A. No.

22 Q. Have you ever been deposed before?

23 A. Yes.

24 Q. In what connection?

25 A. In a car accident.

Confidential

31

1 did he ask you to help him?

2 A. There are many different situations.

3 How to sell, how to approach the market, how to
4 hire reps.

5 Q. This is what you knew from your
6 experience in your furniture business?

7 A. Yes.

8 Q. What was the product that he wanted you
9 to help him with?

10 A. The product is -- is known today,
11 Pandora Jewelry.

12 Q. Can you just generally tell us what that
13 jewelry is?

14 A. It is necklace, and bracelet, in various
15 sizes, where the necklace and bracelet has
16 soldered on a thread. The bracelet divided into
17 three parts with those threads.

18 The bracelet and necklace comes with
19 various locks. They have something called a
20 Pandora lock, and the -- also comes with a lobster
21 claw lock, plus there are several hundred beads,
22 spaces, as well as clips, who clips on top of the
23 threads to divide the bracelet into different
24 parts, plus that every single bead is threaded.
25 Means that the beads is being screwed on to the

Confidential

32

1 bracelet or necklace, in the combination what
2 people can decide their own personalized jewelry,
3 and it comes in sterling silver. It is made in
4 two tone, gold and silver, and it is made in 14
5 karat gold.

6 Q. Is it only a bracelet?

7 A. I mentioned bracelet and necklace.

8 Q. And a necklace?

9 A. Yes.

10 Q. Is that the only product that Pandora
11 sells?

12 A. At that time I met Michael --

13 Q. Right.

14 A. -- it was. Today it's not.

15 Q. What else does Pandora sell today?

16 A. They sell a line called Pandora Match,
17 which is rings, earrings, different necklaces.

18 Q. Anything else?

19 A. No.

20 Q. And in the marketing literature that
21 I've seen, the claim is that the system is unique.

22 MS. SHORT: Objection as to form.

23 BY MR. GOGGIN:

24 Q. Have you heard that?

25 MS. SHORT: I'm not even sure what

Confidential

42

1 A. You are fighting for the same customer,
2 consumer.

3 Q. Would you consider a Troll Bead product
4 to be a similar product to the --

5 A. No.

6 Q. -- Pandora?

7 A. No.

8 Q. What's the difference?

9 A. The difference is that, in my opinion,
10 that Pandora has developed a product, which in my
11 opinion is unique, in the sense that it is a
12 bracelet who is divided into three sections.

13 The way it's divided, is divided with a
14 little thread, which is soldered on to the
15 bracelet, and each bead has an inside thread
16 fitted into the bead.

17 So, the only way to get the beads off
18 and on a bracelet is to twist it on to the
19 bracelet, which has the effect that when a person
20 who wears the product takes it off, that the beads
21 will not fall out of the bracelet. And besides
22 that, there are small clips who clip on top after
23 you position your beads where you like them to be
24 on the bracelet.

25 You put your small clips on top of the

Confidential

43

1 thread, which make this bracelet division into the
2 three different parts, and to the best of my
3 knowledge, Troll Beads does not have any kind of
4 threaded beads, does not use -- utilize the same
5 kind of design of the bracelet, the chain, and the
6 necklace chain, and does not screw on-off. Does
7 not screw off and on, no.

8 Q. Do you know whether you can use Troll --
9 a Troll bead on a Pandora bracelet?

10 MS. SHORT: Objection as to form.

11 You can answer the question.

12 BY MR. GOGGIN:

13 Q. You can answer.

14 A. Yes, I know. And you cannot.

15 Q. You cannot use it?

16 A. You cannot use it.

17 Q. Have you ever tried it?

18 A. No.

19 Q. How do you know you can't do it?

20 A. Because I'm told it cannot be done.

21 Q. Are there other -- strike that.

22 Are there beads manufactured by
23 companies other than Pandora and Troll Beads, that
24 are compatible with the Pandora bracelet?

25 MS. SHORT: Objection as to form.

Confidential

44

1 BY MR. GOGGIN:

2 Q. You can answer.

3 MS. SHORT: The witness testified
4 that -- gave testimony that Troll beads are
5 not to be used with or cannot be used with
6 Pandora, and your question assumes that they
7 can.

8 MR. GOGGIN: Well, I didn't intend it
9 that way. I'll try it again.

10 BY MR. GOGGIN:

11 Q. Are you aware of any other -- strike
12 that. Any companies other than -- well, strike
13 that.

14 Are you aware of any companies whose
15 beads can be used with Pandora bracelets?

16 A. Yes.

17 Q. Which?

18 A. I'm aware of two companies, which is Zo
19 Beads and Chamilia.

20 Q. How do you spell the first one?

21 A. I think it's Z-O Beads. Zo Beads.

22 Q. Tell me about Zo Beads.

23 A. Zo Beads.

24 Q. Zo Beads. What kind of company is that?

25 A. It's a company who used to sell, and I

Confidential

45

1 believe still sells, Italian charm bracelets,
2 which is an old product, and due to Pandora's
3 success that they have formed, formed, they are
4 selling under the name Zo Beads a similar product
5 to Pandora, where they have copied the idea of
6 having threaded beads which screw off and on the
7 bracelets.

8 Q. Are there -- where is the Zo Beads
9 Company located?

10 A. I believe they are in Florida.

11 Q. Has Pandora taken any action to stop Zo
12 Beads from doing that?

13 A. I believe Pandora's lawyer have sent a
14 letter to the two companies just mentioned, Zo
15 Beads and Chamilia.

16 Q. Have you seen the letter that was sent?

17 A. No.

18 Q. What do you know about the letter that
19 was sent to both companies?

20 A. I only know what I just told you.

21 THE WITNESS: Would you mind if we take
22 a break?

23 MR. GOGGIN: No. Okay?

24 MS. SHORT: That's fine.

25 (Thereupon, a short recess was

Confidential

46

1 taken.)

2 BY MR. GOGGIN:

3 Q. Mr. Hostrup, I think you identified two
4 other companies that you are aware that
5 manufactured beads that might be used with the
6 Pandora bracelet. Correct?

7 A. Correct.

Q. And that was Chamilia and --

9 A. Zo Beads.

10 Q. Zo Beads. Have you ever heard of a
11 company called Nappiwholesale.com?

12 A. Can you repeat it?

13 Q. N-A-P-P-I Wholesale.

14 A. No.

15 Q. Have you heard of a company called
16 Biaggi?

17 A. Biaggi?

18 Q. Biaggi.

19 A. Yes.

20 Q. That's B-I-A-G-I.

21 A. I think it's B-I-A-G-G-I.

Q. What do they do?

23 A. From my understanding, is that they are
24 selling Italian charm bracelet, plus they are also
25 selling a copy of Pandora.

Confidential

47

1 Q. A copy of Pandora?

2 A. Yes.

3 Q. Is this an authorized copy of Pandora?

4 A. No. Not that I know of.

5 Q. So, it's not a different bead that might
6 be used. It's a copy?

7 A. It's the same system.

8 Q. Do you know whether Pandora has taken
9 any efforts to make Biaggi stop doing that?

10 A. I don't.

11 Q. Have you heard of a company called
12 Italycharms.com?

13 A. No.

14 MR. GOGGIN: Let's mark this one as 4.

15 (Whereupon, Pandora Exhibit 4 was
16 marked for identification.)

17 MS. SHORT: Okay. Thank you.

18 MR. GOGGIN: Thank you.

19 BY MR. GOGGIN:

20 Q. Mr. Hostrup, I show you what we have
21 marked as Exhibit No. 4, and ask you if you could
22 read through that, please.

23 A. Read through the document here?

24 Q. I'm going to ask you questions about it,
25 and your attorney has been asking that you read

Confidential

51

1 from the Italian charm bracelets on the Pandora
2 bracelet?

3 A. No. No. In my opinion, that cannot be
4 done.

5 Q. And why not?

6 A. Because the small, independent links in
7 an Italian charm bracelet, is a link by itself
8 which you hook on to one another and make it any
9 length you like. It's not starting with what
10 Pandora -- what we have, which is a bracelet in
11 various lengths already pre-made, and the link
12 itself, where our beads needs to have a chain to
13 be put on, to screw on to, or a necklace to screw
14 on to, the Italian charm bracelets make itself by
15 hooking on each link to one another, and makes the
16 design as well as it makes the chain itself. Two
17 totally different concepts.

18 Q. Have you ever heard of a company called
19 Uno Domani?

20 A. Yes.

21 Q. U-N-O, D-O-M-A-N-I?

22 A. Yes.

23 Q. What do they do?

24 A. They have also been selling, I don't
25 know if they still do, Italian charm bracelets.

Confidential

52

1 Q. Italian charm bracelets?

2 A. Yes.

3 Q. What this says is -- well, this appears
4 to describe, when they talk -- strike that.

5 It says, "Uno Domani is selling Pandora
6 Italian bead bracelets."

7 Is that true?

8 A. I am familiar with the Uno Domani have
9 also copied Pandora's system and concept.

10 Q. How did they copy it?

11 A. With screw on beads. With inside
12 threads on each bead, yes.

13 Q. Were they also using the name, Pandora?

14 A. No.

15 Q. Do you know whether Pandora took any
16 efforts to stop Uno Domani from doing that?

17 A. That I don't know.

18 Q. On the second page of this, there is
19 a -- halfway down it says, "Our concept," and it
20 says, "Pandora Jewelry, the company, Pandora has
21 deep roots in the City of Firenze, Italy."

22 Is that true?

23 A. I don't know. I don't believe so.

24 Q. As far as you know, where are the roots
25 of Pandora Jewelry Company?

Confidential

65

1 THE WITNESS: Yes.

2 BY MR. GOGGIN:

3 Q. Have you seen that letter before?

4 A. Yes.

5 Q. The letter is dated September 14, 2004.

6 Correct?

7 A. Yes.

8 Q. It refers to a document called "Terms
9 and Conditions." Is that correct?

10 A. Yes.

11 Q. What are the terms and conditions that
12 were sent on to Pandora's customers?

13 A. That is a two page document, which
14 outlines the terms and conditions to become a
15 Pandora authorized dealer.

16 Q. What are the terms -- what are the terms
17 and conditions, as you remember them?

18 A. The first condition is that you cannot
19 become a Pandora authorized dealer if the customer
20 decides to carry any other manufacturer's product
21 who has the same idea as Pandora. Means that if
22 any other company has copied Pandora's bracelet
23 type with the -- with the threads and as well as
24 the threaded beads, that Pandora will not consider
25 them a potential customer.

Confidential

66

1 Q. Okay.

2 A. And the second condition is that Pandora
3 will not accept customers who wants to sell our
4 product on Ebay, with or without a store. With or
5 without a retail store.

6 Q. Do you know why that is?

7 A. No.

8 Q. How long has that policy been in effect?
9 Excuse me. The two conditions you just described,
10 how long has Pandora required those conditions for
11 retailers?

12 A. I don't recall when we first applied
13 that to our dealers, but I believe that around
14 this period when this letter is sent out, in
15 September 2004, was the time when we want to put
16 that in writing and have it signed by the
17 customer.

18 Q. So, you think you had it sometime before
19 this, but this was to put it in writing?

20 A. Yes.

21 Q. Was it a policy that Pandora had from
22 the very beginning?

23 A. I don't know.

24 MS. SHORT: Objection as to form, as to
25 "beginning."

Confidential

70

1 A. Selling the same concept as Pandora,
2 which is a bracelet divided into parts with screw
3 on beads.

4 Q. Sometimes you use the word "concept" and
5 sometimes you say it's a copy. Is there a
6 difference in your mind between the two?

7 A. I don't know what you are referring to.
8 For me, the concept is the whole concept of
9 building your own bracelet and necklace, the way
10 it is described by me previously, which is a
11 divided bracelet into three parts, with specific
12 small threads soldered on to the bracelet, where
13 all the beads has an inside thread which screws on
14 into the bracelets, which has clips who goes on
15 top of the little thread after you put your beads
16 on, where you position them where you want them to
17 be, or the necklace, for that matter. It's the
18 same.

19 Q. Okay.

20 A. And that is what I refer to as the
21 concept of Pandora.

22 When I'm talking about copying, that
23 means, in my estimation, is that -- what I mean by
24 that is that people or companies who have copied
25 that concept, they're copying the concept. The

Confidential

78

1 A. Nothing happens.

2 Q. They continue on?

3 A. They will continue on, but it might, at
4 the end, end up where that we will not keep our
5 exclusivity with that customer, that we will open
6 another store so we can get the full amount of
7 sales based upon that territory.

8 Q. What is the -- what is the exclusivity,
9 territorial exclusivity arrangement that you have?

10 MS. SHORT: Objection as to form. With
11 whom?

12 BY MR. GOGGIN:

13 Q. With your retailers.

14 A. Again, you are basing it on my
15 territory, of course?

16 Q. Your territory, right.

17 A. We have a general rule, which is that
18 customers will get an exclusivity based upon
19 inhabitants in the area, with the distance
20 between stores in case there are more than
21 people, that we will try to have a competitor
22 within walking distance.

REDACTED

23 Q. I didn't understand that. I'm sorry.

24 A. That's okay.

25 Q. We can take it a bit at a time.

Confidential

79

1 You want to have one store for every
2 inhabitants, generally?

REDACTED

3 A. If there's more than people,
4 there will be one other store. There will be two
5 stores.

6 Q. And the two stores will have some --

7 A. And we have -- we will not have that in
8 a walking distance between the stores, those two
9 locations.

10 Q. I see. Okay.

11 If one of your stores is not performing
12 as is expected, you might withdraw that
13 exclusivity agreement and put another store in?

14 MS. SHORT: Objection as to form.

15 BY MR. GOGGIN:

16 Q. You could answer.

17 A. Yes. We will then -- first we will
18 consult the store to find out why he's not
19 performing the way we expect, and if he doesn't
20 have the money to invest more in the line, if he
21 doesn't have the space to show the line better, if
22 the customer doesn't want to advertise the line,
23 if the customer don't want to have trunk shows,
24 then we will inform the customer that we will
25 consider another store in his area.

Confidential

90

1 indicate the source of the recording, the date
2 of the recording and the participants of the
3 conversation.

4 Do you agree to that?

5 MR. GOGGIN: I do.

6 MS. SHORT: Thank you.

7 BY MR. GOGGIN:

8 Q. What is your understanding of the
9 meaning of the term, "knock off"?

10 A. My personal opinion, right, you are
11 asking for?

12 Q. Yes.

13 A. My opinion of somebody trying to knock
14 off somebody else's product is to make a copy, to
15 make the consumer believe that they can buy the
16 same product through another company, another
17 source. Trying to copy somebody else's product,
18 is a knock off.

19 Q. Have you ever used that term with
20 respect to Chamilia's products?

21 A. Yes.

22 Q. When have you said that about Chamilia's
23 products?

24 A. Not just about Chamilia's, but I've said
25 it about many other of the companies on the market

Confidential

91

1 which I believe is a knock off. Many occasions.

2 Q. Do you believe that there is a quality
3 difference between the Chamilia products and the
4 Pandora products?

5 A. My personal opinion, after I have seen
6 Chamilia's and Pandora's jewelry, I believe that
7 Pandora has a much more refined and detailed
8 product, which is -- functions better than the
9 Chamilia product due to the way it is being
10 polished and refined, finished. Yes.

11 Q. Tell me in more detail how the Chamilia
12 product is inferior to the Pandora product.

13 A. Besides being a more detailed and
14 refined piece of jewelry, in my opinion, Pandora
15 is -- one of the -- I believe one of the
16 products -- one of the problems with Pandora --
17 with Chamilia product is that due to their lack of
18 refined jewelry, a lot of times their system which
19 they have copied from Pandora, the threaded beads,
20 gets stuck on either Pandora's or their own
bracelets, cannot be twisted on and off no more.
Part of the -- part of what I am explaining to
you.

24 Q. Okay. Anything else?

25 A. No. Except not from what I just

Confidential

92

1 explained. No.

2 MR. GOGGIN: Let's mark this as number
3 9.

4 (Whereupon, Pandora Exhibit 9 was
5 marked for identification.)

6 MS. SHORT: Thank you.

7 MR. GOGGIN: Thank you.

8 BY MR. GOGGIN:

9 Q. Mr. Hostrup, I show you what we have
10 marked as Pandora No. 9, and ask you to read that
11 to yourself, please.

12 A. Uh-huh.

13 (Pause.)

14 THE WITNESS: Yes.

15 BY MR. GOGGIN:

16 Q. Have you seen that letter before today?

17 A. No.

18 Q. Have you written -- do you know who
19 Steve Glueck is?

20 A. Yes.

21 Q. Who is he?

22 A. He's a sales rep for Pandora on the West
23 Coast.

24 Q. Do you know him?

25 A. What do you mean by "know him"?

Confidential

93

1 Q. Have you ever met him?

2 A. Yes.

3 Q. Have you talked to him about this --
4 about this issue with Chamilia?

5 A. No.

6 Q. Never?

7 A. Never.

8 Q. Did you know that a letter like this had
9 been sent to customers?

10 A. No.

11 Q. Do you know what he means when he says
12 that the Chamilia sales force has been trying to
13 strong arm customers?

14 A. No.

15 MS. SHORT: By "he," you mean

16 Mr. Glueck?

17 MR. GOGGIN: Mr. Glueck, correct.

18 THE WITNESS: I have no idea what he
19 means.

20 BY MR. GOGGIN:

21 Q. Have you observed any, quote, strong
22 arm, close quote, tactics by Chamilia, in your
23 territory?

24 A. Yes. I have experienced Chamilia rep
25 telling our customers, some of them, that they

Confidential

94

1 could easily carry Chamilia as well. Yes, I have
2 experienced that.

3 Q. And you call that a strong arm tactic?

4 A. It's not truth, because they don't, but
5 I don't want to call it strong arm. It's not my
6 terms.

7 Q. What's not true?

8 A. That our stores is carrying Chamilia,
9 and they could easily carry Chamilia, because that
10 is not truth. That's a lie. They cannot.

11 Q. Why is it a lie?

12 A. Because they cannot. We would not -- we
13 would not allow our dealers to carry Chamilia. We
14 will -- either they have the decision to make not
15 to bring in Chamilia, or they will have -- we will
16 have to pull our merchandise from the store.

17 Q. Mr. Glueck says that some of his stores
18 felt bullied by the Chamilia representatives. Is
19 that what --

20 A. Yes, he said that.

21 MS. SHORT: You can look at the exhibit.

22 THE WITNESS: Yes, he said that.

23 BY MR. GOGGIN:

24 Q. Have you experienced any similar
25 feelings from the stores within your region?

Confidential

95

1 MS. SHORT: Object to the form of the
2 question.

3 The witness can't speak to what
4 Mr. Glueck was feeling at the time he wrote
5 the letter.

6 BY MR. GOGGIN:

7 Q. Have any of your stores expressed any
8 concerns to you whatsoever, over anything that's
9 being said to them by Chamilia?

10 A. Not that I can recall.

11 Q. Mr. Glueck apparently refers to knock
12 off companies as companies with significant
13 quality and image differences. Is that correct?

14 A. Yes, he does.

15 MS. SHORT: Again, the document speaks
16 for itself.

17 MR. GOGGIN: The witness has answered
18 the question.

19 BY MR. GOGGIN:

20 Q. Do you agree with that?

21 A. I have to -- I don't remember the --
22 what was your question?

23 Q. Do you agree with Mr. -- the assessment
24 stated in this letter by Mr. Glueck, that the
25 knock offs have a significant quality and image

Confidential

96

1 difference?

2 A. Quality difference, I agree with him.

3 There is a significant quality difference.

4 Q. That's as we discussed earlier?

5 A. Yes.

6 Q. What about image difference?

7 A. I don't know what he means by that.

8 Q. He says that, to his customers, that, "I
9 believe that you all understand where Pandora is
10 heading in the future."

11 Do you know what he's referring to
12 there?

13 A. I have no idea.

14 Q. Have you -- well this letter is dated
15 April 12, this spring.

16 Have you recently received any calls
17 from stores expressing concerns about Chamilia?

18 A. Not that I recall.

19 Q. Let's go back. I'd like to talk about
20 communications that you have had at these trade
21 shows regarding Chamilia, and start with the
22 August 2003 San Francisco trade show.

23 Do you remember being there?

24 A. No.

25 Q. I'm sorry. The February 2000 -- the

Confidential

100

1 Q. Okay. Anything else in here that you
2 would like to correct?

3 A. No. No. You want my copy?

4 Q. Yes.

5 A. Okay.

6 Q. So, now, tell me without reading from
7 your affidavit, or your declaration, what it is
8 you recall about discussions you had then with the
9 Chamilia person.

10 A. I recall --

11 MS. SHORT: Object to the form of the
12 question. He's already corrected his
13 affidavit, or declaration, that he's not -- he
14 doesn't recall if the individual to whom he
15 spoke was a Chamilia person, as you have
16 identified in your question.

17 MR. GOGGIN: He said but he now believes
18 that it was.

19 MS. SHORT: Now, he does, but you said
20 "the Chamilia person." So, I just make that
21 clear for the record.

22 BY MR. GOGGIN:

23 Q. You can answer the question.

24 A. I remember a situation from the trade
25 show where somebody came to the booth and wanted

Confidential

101

1 to hear about our product.

2 During that conversation, I remember
3 that the person told me that the person did not
4 believe that we had a patent application, to which
5 I stated to the person that I could not believe
6 that Pandora would write on all public material
7 like brochures, like, I pointed out to the person,
8 on the big banners, we had banners, big posters we
9 have in the booth, that it was clearly marked
10 "Patent Pending," that I did not believe that
11 Pandora would do that and be so bold and let
12 people believe they had something which in fact
13 they did not.

14 I remember the person got very upset
15 about my statement and walked away from the booth,
16 looking kind of angry, and the reason that I
17 recall that is that was the only person who did
18 that. So -- during the whole show. So, I assume
19 that was the situation being referred to by
20 Chamilia in their complaints.

21 Q. You said the only person doing that?

22 A. Walked away and feeling upset.

23 Q. Being angry?

24 A. Yes.

25 Q. Okay. Have you had any other

Confidential

105

1 A. Yes.

2 Q. Do you recall any discussions about
3 Chamilia?

4 A. The discussion doesn't go too much about
5 Chamilia. It goes about any company. It's just
6 not Chamilia. We don't care about Chamilia. We
7 don't care about Zo Beads. We care about them
8 all, who will try to knock off our idea and our
9 concept.

10 Q. Do you talk to your sales reps about
11 what they discuss with their customers?

12 A. Not generally, no.

13 Q. How do you keep track of what they're
14 doing?

15 A. Look at how many orders they open and
16 how many new accounts they open, and we get a
17 written report in about who they see and who they
18 talk with, but not about what they talk. They're
19 independent contractors as well as we all are, so
20 we can't demand too much paperwork from them.

21 Q. Have you ever told anybody that Pandora
22 was going to shut down Chamilia?

23 A. No. That wouldn't be true. To the
24 contrary.

25 Q. What do you mean, "To the contrary"?

Confidential

107

1 might sue retailers who sold Chamilia products?

2 A. Never.

3 Q. Did you ever tell anybody that Pandora
4 would confiscate Chamilia inventory from the
5 customers?

6 A. Never. How could they? No.

7 Q. Did you ever tell anybody that Pandora
8 would take sales representatives' commissions?

9 A. No.

10 Q. Do you know an Amy Paliotti?

11 A. I didn't hear your question.

12 Q. Do you know a person named Amy Paliotti,
13 P-A-L-I-O-T-T-I?

14 A. No.

15 Q. Do you know a company called Charm
16 Del'Italia? That's D-E-L, apostrophe,
17 I-T-A-L-I-A.

18 A. You have to tell me from what state
19 and -- because they all call the same, so --

20 Q. They're all called Italian Charms or
21 something?

22 A. They have so many names, that, yes. We
23 have a big problem with that.

24 Q. Braintree, Massachusetts?

25 A. Yes. We have a customer called that.

**EXHIBIT Q to Supplemental Declaration
of Gianfranco G. Mitrione
dated July 15, 2005**

Page 1

1

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Civil Action No. 04-CV-06017 (KMK)

5

6

COPY

7 CHAMILIA, LLC,

8 Plaintiff,

9 vs.

10 PANDORA JEWELRY, LLC,

11 Defendant.

12

13

14 DEPOSITION of KATHY L. SHAW-RILEY, taken
15 pursuant to notice, at the offices of Verrill & Dana,
16 One Portland Square, Portland, Maine, on May 6, 2005,
17 commencing at 9:05 A.M., before Susan R. Berube, Registered
18 Merit Reporter, a Notary Public in and for the State of
19 Maine.

20

21

22

23

24

25 JOB NO.: 173120

Page 26

1 A. Jewelry customers or --

2 Q. Jewelry customers.

3 A. Approximately -- I need to clarify that. Jewelry
4 stores or jewelry -- just anybody who buys jewelry?

5 Q. How many customers do you call on to sell the jewelry
6 products, the customers whether they be retailers or --

7 A. Approximately 200.

8 Q. And do you maintain a list of those customers?

9 A. Yes, I do.

10 Q. How is that list maintained?

11 A. How do you mean how is it maintained?

12 Q. Do you have a hard copy that you --

13 A. I keep hard copies.

14 Q. Do you have a list on your computer?

15 A. I wish I did, no.

16 Q. How often do you call on individual retail customers?

17 A. It all depends if you class a retail customer -- we
18 class them as A, B and C customers. I could call on an A
19 customer probably every two weeks, a B customer once a
20 month and a C customer 6 to 12 weeks.

21 Q. What do you consider an A customer?

22 A. An A customer is a finer boutique or jewelry store,
23 more high end or one that does the most volume. I have
24 some A customers that could be a grocery store, so I wanted
25 to clarify that.

1 **Italian charms in the last two years.**

2 Q. Italian charms?

3 A. **The Italian charms.**

4 Q. Which ones are those?

5 A. **The add-a-link.**

6 Q. And what are the brand names of add-a-link charms?

7 A. **C.G. Creations and Lavello.**

8 Q. Could you spell that?

9 A. **L-A-V-E-L-L-O. And Sunrise and that's not a name I
10 gave you before.**

11 Q. So the bulk of your business has been selling Italian
12 charms?

13 A. **Yes.**

14 Q. And what --

15 A. **In the last two years only.**

16 Q. And has there been a change in that business?

17 A. **Yes, there has.**

18 Q. And what has been the change?

19 A. **The change is the add-a-link charms are slowing down
20 and the bulk of the business is starting to come from
21 Chamilia and a card company I represent, that's my
22 business.**

23 Q. What do you attribute the slowing down of the sale of
24 add-a-link jewelry to be?

25 A. **It's the nature of the business. The consumer is**

Page 32

1 **spiffle, they move from one product to the next.**

2 Q. So approximately when did the customer start moving
3 away from the add-a-link charms to the Chamilia product?

4 A. **Approximately in the last six to nine months.**

5 Q. So back in late 2003 when you say you began selling
6 the Chamilia jewelry products, was your sale less than the
7 Italian charms, add-a-link bracelets?

8 A. **Repeat the time frame, please.**

9 Q. You began selling Chamilia jewelry products in late
10 2003; isn't that what you said?

11 A. **Correct.**

12 Q. Back in late 2003 you also were selling Italian
13 charms, add-a-link bracelets?

14 A. **Yes.**

15 Q. At that time were you selling more Italian add-a-link
16 bracelets than Chamilia jewelry products?

17 A. **Well, probably I need to clarify it for you.**

18 Q. Okay.

19 A. **We're talking two different entities. The Italian
20 charms are \$1.25.**

21 Q. 1.25?

22 A. **Wholesale, I'm speaking wholesale.**

23 Q. Each piece?

24 A. Each piece. Chamilia at that time was \$5.50 starting
25 prices. So at that point in time the bulk of my business

Page 103

1 when the product was first introduced. I have not had that
2 problem in a long, long time.

3 Q. If a retailer of yours wishes to discontinue the sale
4 of Chamilia jewelry product, how do they go about doing
5 that?

6 A. I haven't really had any wish to discontinue selling
7 it.

8 Q. Has a customer communicated to you any confusion that
9 they have between Chamilia and Pandora Jewelry products?

10 A. What type of confusion?

11 Q. That they thought they were buying Pandora when they
12 were buying Chamilia?

13 A. No, they know the difference.

14 Q. Do they have any -- have you ever received returns of
15 Pandora's beads --

16 A. No, I have not.

17 Q. -- from customers? No?

18 A. No.

19 Q. Has any Chamilia sales representative communicated to
20 you any confusion they have experienced in the marketplace
21 between Chamilia and Pandora Jewelry products?

22 A. No.

23 Q. What makes Zo beads a competitor of Chamilia?

24 A. They are a competitor of Pandora and Chamilia. They
25 all look alike basically, they are all screw on beads, they

1 A. I believe they are the same entity.

2 Q. Was anyone else present during your conversation with
3 Jody Henderson?

4 A. I had a customer come by. I do not know if she heard
5 the conversation or not, but there were other manufacturers
6 to our right and to our left and the owner was there and
7 like I said another Illinois rep group and there were
8 booths right across from us or people in booths right
9 across the aisle from us.

10 Q. And how many people were in the booth, if you recall,
11 at the time having a conversation?

12 A. Four of us and Jody's little girl.

13 Q. So there were five total, including you and Jody
14 Henderson?

15 A. Correct -- no -- yes, correct.

16 Q. Is Chamilia jewelry products displayed in the Message
17 Connection booth?

18 A. No, it's not.

19 Q. What is the layout of the booth?

20 A. It had a table along the back and I believe two tables
21 on each side.

22 Q. And where were the other people that you referred to
23 standing in relation to where you and Jody were having your
24 conversation?

25 A. I was standing to the right, Jody was standing mostly

1 application is made and that is much after the fact then
2 when several companies were out there with the same
3 product.

4 Q. Do you know whether Pandora holds a patent for its
5 Jewelry designs?

6 A. It does not to my knowledge.

7 Q. How do you know it doesn't?

8 A. Well, I believe that I was told, but I'm sure if they
9 were, they would -- it says patent pending, I haven't seen
10 a document that says it's gotten the patent.

11 Q. Has anyone communicated to you otherwise?

12 A. Yes, I have been told that through Chamilia that there
13 is no patent on it.

14 Q. And do you remember who communicated that to you?

15 A. No, I do not.

16 Q. Do you know when that was communicated to you?

17 A. It's been recently, also, probably within the last
18 month.

19 Q. And what would be the reason for this person to tell
20 you that there hasn't been a patent issued for Pandora
21 jewelry designs?

22 A. I'm sure to insure their rights to still sell the
23 product.

24 Q. Through you?

25 A. Through everyone.

Page 132

1 Q. Has Chamilia ever shared with you a business plan of
2 projected sales?

3 A. No, they would not do that.

4 Q. Have they ever indicated to you that they would expect
5 a certain amount of sales of Chamilia jewelry products to
6 retailers?

7 A. In my territory or in the U.S.?

8 Q. In your territory.

9 A. They don't have to, but I'm one of the best reps in
10 the U.S.

11 Q. How do you know that?

12 A. I open more accounts and do more business; I'm always
13 in the top three or four.

14 Q. You're always in the top three or four of what?

15 A. The salespeople.

16 Q. How do you know that?

17 A. Lisa Whirlow and Jeff and Killian have told me.

18 Q. Verbally?

19 A. Yes.

20 Q. Is there a document which reflects that you're one of
21 the top four salespeople for Chamilia?

22 A. No.

23 Q. Are their sales reports provided by Chamilia or sales
24 generated by individual sales reps?

25 A. No, because we're independent reps, we would not be

Page 142

1 A. A customer would have been a customer that already was
2 buying Message Connection bracelets and/or other jewelry
3 product and/or potential customers who have not placed the
4 line, but you're hoping to be able to sell that line.

5 Q. So they weren't Message Connection customers or
6 potential customers of Chamilia?

7 A. All -- most all of my customers are potential
8 customers to all the manufacturers I represent.

9 Q. But these specific customers that you're referencing
10 that were in and out of the booth when you were having the
11 conversation with Jody Henderson were they customers?

12 A. Yes, one of them was a customer.

13 Q. Who was that?

14 A. That was the Gingerbread Cottage.

15 Q. Who from Gingerbread Cottage was present?

16 A. Pam Mitchell.

17 Q. Pam Mitchell?

18 A. Yes. And a potential customer was a customer that was
19 with her from Elkhart, Indiana and boy, I don't recall her
20 name or the store's name, but I can get that for you.

21 Q. And how do you know they heard the conversation
22 between you and Jody Henderson?

23 A. I believe I stated they were standing there, I'm not
24 sure that they heard the exact conversation, but they were
25 present and around the booth at the time.

**EXHIBIT R to Supplemental Declaration
of Gianfranco G. Mitrione
dated July 15, 2005**

1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
-----x

4 CHAMILIA, LLC,

5 Plaintiff,

6 v.

04-CV-6017
(KMK)

7 PANDORA JEWELRY, LLC,

8 Defendant.
9 -----x

10
11
12 CONFIDENTIAL - ATTORNEYS EYES ONLY

13
14 May 12, 2005

15 9:15 a.m.

16
17 Videotaped deposition of JEFFREY
18 JULKOWSKI, taken by Defendant, pursuant to
19 notice, at the offices of Lathrop & Gage, 230
20 Park Avenue, New York, NY 10169, before Lisa
21 Mango, a Shorthand Reporter and Notary Public of
22 the State of New York.

23

24

25

1 Julkowski - Confidential 147
2 Q. If you've never seen -- read it, sure.
3 I would ask you to only look at the
4 exhibit I put in front of you, if you could.
5 Thank you.
6 MR. GOGGIN: He can look at whatever he
7 wants to.
8 MS. SHORT: I'm asking him questions
9 about that document I presented.
10 MR. GOGGIN: He's trying to understand
11 this case that you're talking about. And if
12 you've given him an exhibit, he's entitled
13 to read it.
14 Q. Have you finished?
15 A. As much as I understand, yes.
16 Q. Do you recognize this document?
17 A. Correct.
18 Q. I'm sorry.
19 A. Correct.
20 Q. You do?
21 A. It's a settlement document between the
22 lawsuit.
23 Q. What is the title of the document? I
24 direct your attention to the right-hand column?
25 A. Final Judgment on Consent.

1 | Julkowski - Confidential 148

2 Q. What do you understand that to be?

3 A. A settlement between the two companies
4 on the disagreement.

5 Q. Who are the two parties?

A. Pandora Jewelry, LLC and Chamilia, LLC.

7 Q. What do you understand the terms of
8 this judgment to be?

9 A. That the company is going to melt down
10 the product that they were selling at that time.

11 Q. Which company?

12 A. Chamilia was going to melt down the
13 product that they were selling at that time.

14 Q. Do you understand that this is a final
15 judgment that was entered against Chamilia for
16 copyright infringement?

17 A. Correct.

18 Q. Do you understand that this judgment
19 indicates that Chamilia consented to a permanent
20 injunction to cease the sale of the beads as
21 attached as Exhibit 1?

22 A. Correct.

23 Q. And did Chamilia cease the sale of the
24 beads?

25 A. They were all sent back to the factory

1 149
2 and melted and credit was applied to the account.
3 Q. As part of this judgment, was Chamilia
4 required to pay any money to Pandora?
5 A. That's point number 7, yes.
6 Q. What amount is that?
7 A. \$110,000.
8 Q. I refer your attention to page 5. Is
9 that your signature?
10 A. No.
11 Q. On page 5?
12 A. Correct.
13 Q. The second page 5.
14 A. Yes.
15 MS. SHORT: Let the record reflect that
16 Mr. Goggin is laughing.
17 Q. Is that your signature?
18 A. On page 5-B, yes.
19 Q. By signing this document, what did you
20 understand you were doing?
21 A. The settlement -- the disagreement
22 between Pandora and Chamilia was completed, both
23 sides came to an agreement.
24 Q. What, if anything, did Pandora agree as
25 a result of this judgment?

1 Julkowski - Confidential

150

2 A. That Chamilia would not sell the beads
3 that are on this page.

4 Q. What did Pandora do? What were they
5 required to do as part of this judgment?

6 A. You have to ask Pandora.

7 Q. You signed the agreement. Does the
8 agreement require Pandora to do anything?

9 MR. GOGGIN: The agreement speaks for
10 itself. You can answer.

11 Q. What is your answer?

12 A. That the lawsuit was completed. Two
13 companies had a disagreement and this is the
14 document that they agreed on that the
15 disagreement's over.

16 Q. By signing this judgment, did you admit
17 that Chamilia committed copyright infringement of
18 Pandora's copyrighted jewelry designs?

19 MR. GOGGIN: Objection to the extent
20 that calls for a legal conclusion as to the
21 effect of signing a judgment.

22 Q. You can answer the question.

23 A. This document shows that Pandora didn't
24 have any more complaints about Chamilia. We
25 agreed that there was no disagreement at that

1 Julkowski - Confidential 151
2 point.

3 Q. By signing this judgement, did you
4 admit that Chamilia committed copyright
5 infringement of Pandora's jewelry products?

6 MR. GOGGIN: Same objection.

7 A. The agreement says that Pandora was
8 going to stop with their complaints and all
9 parties agreed that there was no complaints, that
10 there was no issues after we came to this
11 agreement.

12 Q. I refer the witness's attention to
13 paragraph 4, page 2. What do you understand that
14 paragraph to say?

15 MR. GOGGIN: Objection to the extent it
16 calls for a legal conclusion. He is not an
17 attorney.

18 MS. SHORT: I'm asking the witness's
19 understanding of the paragraph 4 of the
20 document that he signed.

21 A. I don't understand. I mean, looking
22 through this it says we went to court and the
23 judge is the one who made the agreement. The
24 agreement was made between our counsel and
25 Pandora's counsel. So I don't understand all of

1 Julkowski - Confidential 152
2 these points within here.
3 Q. So number 4, what is your understanding
4 of that, paragraph 4?
5 A. It says final judgment has been
6 granted.
7 Q. In favor of who?
8 A. In favor of Pandora.
9 Q. For what claim?
10 A. On a complaint of copyright
11 infringement, and all counts are thereby
12 dismissed.
13 MS. SHORT: I ask that the court
14 reporter mark as Pandora 9, document
15 entitled Undertaking in Connection with
16 Final Judgment on Consent.
17 (Undertaking in Connection with Final
18 Judgment on Consent marked Pandora Exhibit 9
19 for identification)
20 Q. Mr. Julkowski, can you review that
21 document and let me know when you completed
22 reviewing it. Thank you.
23 A. Yes.
24 Q. Do you recognize this document?
25 A. Correct.

1 Julkowski - Confidential 189

2 Q. I'm asking you.

3 A. Yes. I spoke with several of those
4 customers, yes. And several of them were told
5 that Donna Renee, who is still a customer but was
6 told my Michael Lund several times -- Carlos
7 Italian Charm Shop -- several times that she
8 would be sued -- Newt Hofstra, I believe is his
9 name, called her also and I think may have
10 actually visited her. Michael has sent her
11 e-mails and voicemails saying that he would be
12 closing us down with his patent.

13 Q. Were you present during any
14 conversations Donna Renee may have had with
15 Michael Lund regarding a patent?

16 A. No. Unfortunately not. I did hear
17 voicemails and e-mails, strictly from him.

18 Q. Were you present during a conversation
19 between Donna Renee and Newt Hofstra regarding a
20 patent Pandora may have?

21 A. No.

22 Q. Other than what Donna Renee has
23 communicated to, what is your personal knowledge
24 that Newt Hofstra has discussed a patent Pandora
25 may have?

1 Julkowski - Confidential 192
2 A. I don't know. I don't know when she
3 was selling them online.
4 Q. Now how do you know that, in fact, she
5 was selling --
6 A. I saw them online. I don't recall the
7 time frame.
8 Q. You don't recall when you saw them
9 online?
10 A. No.
11 Q. Does Carlos Italian Charm Shop
12 currently sale Chamilia beads?
13 A. Yes.
14 Q. And when did they start carrying
15 Chamilia jewelry products?
16 A. I don't recall.
17 Q. Was it 2004?
18 A. I don't recall.
19 Q. Was it 2005?
20 A. I don't recall.
21 MR. GOGGIN: Asked and answered.
22 Q. Was it 1988?
23 A. Wasn't in business in 1988.
24 Q. So then the answer is no?
25 A. I didn't say no. I said I don't know.

1 Julkowski - Confidential 234

2 Q. What rights does a patent afford its
3 holder?

4 A. I have to ask counsel. I don't know
5 exactly what that --

6 Q. What is your understanding?

7 MR. GOGGIN: I will object to the
8 extent it calls for a legal conclusion.

9 But you can give her your
10 understanding.

11 A. A patent provides you -- my loose
12 understanding is if you have something that the
13 US government believes is something unique and
14 different, they will provide you a patent to
15 protect that.

16 Q. Have you applied for a patent for any
17 of your jewelry designs?

18 A. I have not filed for a patent.

19 Q. Has Chamilia?

20 A. No.

21 Q. What is your understanding of the term
22 patent pending?

23 A. That they -- patent pending means there
24 is a possibility that somebody could or could not
25 get a patent.

1 Julkowski - Confidential 300

2 A. Sales organizations have their own

3 internal numbers what they want to sell. I don't

4 know what their internal goals are to how much to

5 sell.

6 Q. So does Chamilia have a plan which

7 shows anticipated growth of business?

8 A. No.

9 Q. Does Chamilia have a plan which shows

10 it's perspective business opportunities?

11 A. No, not that I recall.

12 Q. Does Chamilia have a list of customers

13 that it intends to target?

14 A. We have a list -- no -- we have a list

15 of customers that reps send us and we send them

16 postcards as we discussed earlier. As a target

17 list, I don't know, I don't know what the count

18 is.

19 Q. Has Chamilia ever held a sales meeting?

20 A. Yes.

21 Q. And when was that?

22 A. The reps did, national sales reps did.

23 Q. And when was that?

24 A. January '04.

25 Q. Where was it held?

1 Julkowski - Confidential

304

2 that Michael spoke with, Rob Knott in Jersey,
3 said it was a shit product inferior to his
4 product.

5 Q. And when was that communication made?

6 A. I have to go back and look in my notes
7 to see when he spoke with Rob. It was multiple
8 times he spoke with that customer.

9 Q. When was the last time you know that
10 Michael spoke with that customer?

11 A. I have no idea.

12 Q. Have you ever heard a Pandora
13 representative say, in your presence, that
14 Chamilia jewelry products are shoddy quality
15 merchandise?

16 A. No.

17 Q. Have you ever met Steve Glueck?

18 A. Seen him, never met him.

19 Q. Where did you see him?

20 A. San Francisco gift show, fall of '04 --
21 or summer of '04 -- fall of '04.

22 Q. Have you ever spoken to him?

23 A. No.

24 Q. You've indicated that customers have
25 canceled their order to purchase Chamilia jewelry

1 Julkowski - Confidential 325

2 that you've personally heard?

3 A. I personally have -- yes, the
4 voicemails and personally read the e-mails.

5 Q. When have you overheard Pandora or
6 Pandora's representatives threaten your customers
7 with suits for willful patent infringement?

8 A. Donna Renee Carlos was threatened with
9 that.

10 Q. You personally heard the threat?

11 A. I'm sorry. No -- yes, well, going back
12 to the voicemail, I'm not sure if there was a
13 threat or what the voicemail entailed, but it was
14 to that customer.

15 Q. But do you recall Pandora
16 representative or Pandora making threats
17 specifically referencing suits for willful patent
18 infringement?

19 A. Yes.

20 Q. Personally?

21 A. From the customers.

22 Q. But you've never personally heard a
23 Pandora representative say that?

24 A. Well, Michael Lund, yes.

25 Q. Other than at the Atlanta trade show?

1 Julkowski - Confidential 326

2 A. Just voicemails and e-mails.

3 Q. Have you ever heard a Pandora

4 representative threaten your customers with a

5 suit for millions of dollars in damages and

6 attorney's fees awards?

7 A. I have not. Our sales reps have.

8 Q. And who are those sales reps?

9 A. We can go back to some of the

10 documents -- I don't know off the top of my head.

11 Q. As you sit here today, you cannot

12 recall any names of the sales representatives --

13 A. Lisa Whirlow.

14 Q. -- who were threatened with the stamen

15 that they will be sued for millions of dollars in

16 damages by Pandora?

17 A. Let me see the exact wording what you

18 are referring to. I'm sorry what --

19 Q. Line 3, paragraph 15.

20 A. Yes. I've heard that language from

21 several reps. I'd have to go back and look at my

22 notes of which ones they were and which e-mails.

23 Reps have provided us with, you know, similar

24 comments.

25 Q. Has that specific language been used to

1 Julkowski - Confidential 335

2 Q. Have you ever heard Steve Glueck make
3 any statements regarding any alleged patent
4 rights Pandora has?

5 A. I haven't spoken with him, no.

6 Q. Have you seen anything written from
7 Steve Glueck which alleges that Pandora has any
8 patent rights?

9 A. I don't recall what his note was
10 referring to.

11 Q. Have you ever heard Newt Hofstra make
12 statements about alleged patent rights of
13 Pandora?

14 A. Customers have told me that he has.
15 These customers told me he visited their stores
16 on numerous occasions and made comments that he
17 was going to -- has a patent and was going to
18 shut down their store and confiscate their
19 inventory.

20 Q. Have you personally heard Newt make
21 these statements?

22 A. Through the customers.

23 Q. You've overheard that?

24 A. I've not heard Newt say that out of his
25 mouth, but customers have told me that.

1 Julkowski - Confidential 340

2 that Chamilia was having financial problems?

A. I've heard from -- I'm sorry, who --

4 Q. Personally.

5 A. -- said it?

Q. Personally have you heard that?

7 A. Personally I heard from sales reps.

8 yes.

9

9 Q. No, have you personally overheard a
10 Pandora representative state that Chamilia was
11 having financial problems?

12 A. Through customers. Not personally from
13 the sales rep. But from customers who sales reps
14 told that to.

15 Q. I refer your attention to paragraph 23,
16 "As a result of defendant's unlawful activities,
17 plaintiff has suffered special damages."

18 Do you see that?

19 A. 23, yes.

20 Q. Do you know what special damages is
21 referring to?

22 MR. GOGGIN: Objection to the extent
23 that's a legal term of art drafted by
24 counsel, not by this witness.

Q. You can answer the question if you have

1 Julkowski - Confidential

341

2 an answer.

3 A. I'm reading the sentence. The next
4 words would be including injuries to goodwill and
5 reputation, reduction in sales, loss of profits
6 and inability to distribute the sales.

7 Q. Okay.

8 A. That's the end of the paragraph.

9 Should I read the next one?

10 Q. No, there's no question pending.

11 What do they understand the term special
12 damages to be?

13 A. The verbiage that's on the paper,
14 including injury to goodwill, reputation,
15 reduction of sales, loss of profits and inability
16 to distribute its customers. Included in that
17 would be having to field calls that we're still
18 in business. And our inventory is still on our
19 shelves and hasn't been confiscated by the local
20 sheriff.

21 Q. Has Chamilia at any time had an
22 inability to distribute or sell its products?

23 A. At this lawsuit, no.

24 Q. I'm sorry.

25 A. Reading this -- referring to this

1 Julkowski - Confidential 353

2 A. I don't recall.

3 Q. Have you ever personally heard Mr.
4 Hofstra indicate to a Chamilia customer that
5 their inventories will be confiscated by Pandora?

6 A. The customer has indicated that to me,
7 yes.

8 Q. And you've personally heard Mr. Hofstra
9 communicate that to a customer?

10 A. No.

11 Q. Have you personally heard Mr. Hofstra
12 communicate to a customer that if they sell
13 Chamilia jewelry products, they will be in
14 violation of an existing patent?

15 A. I heard customers who told me that,
16 yes.

17 Q. Have you personally heard that?

18 A. I personally have not heard Mr.
19 Hofstra, no.

20 Q. Have you personally heard Mr. Hofstra
21 communicate to a Chamilia customer that Pandora
22 would have any commissions earned confiscated at
23 Pandora's request for selling Chamilia jewelry
24 products?

25 A. Yes, I've heard that. Was that to me

1 Julkowski - Confidential 354

2 or was that to somebody else? I've heard the
3 comment. Not from him personally.

4 Q. And who have you heard that from?

5 A. Sales reps, customers.

6 Q. Have you personally heard that
7 statement being made by a Pandora representative?

8 A. No. I don't recall.

9 Q. Have you personally seen any
10 advertising or marketing materials by Pandora
11 which referenced Chamilia?

12 A. Yes.

13 Q. And what are those?

14 A. Document number 8 -- 9.

15 Q. You consider document 9 to be a
16 marketing material or advertising?

17 A. Depends on the way it's used.

18 Q. Well, I asked you if you had seen any
19 marketing or advertising materials by Pandora
20 which referenced Chamilia. Then you answered
21 Plaintiff's Exhibit 9.

22 So I'm asking you, is it a marketing
23 material or advertising material in your opinion?

24 A. It depends how it's used. If it's
25 going external from the company, I consider it a

1 Julkowski - Confidential 355

2 marketing or advertising.

3 Q. Have you personally seen any documents
4 which reference -- have you personally seen any
5 marketing or advertising literature of Pandora's
6 which particularly reference the term patent
7 pending?

8 A. I'm sorry.

9 MS. SHORT: Can you read the question
10 back, Ms. Court reporter.

11 (Record read)

12 A. Yes.

13 Q. And what documents were those?

14 A. Advertisements, magazines, sales
15 brochures, websites. Only more recently.

16 Q. In that context, what do you understand
17 the term patent pending to mean?

18 A. Back to -- I don't know. Back to the
19 prior conversation, they applied for something
20 and asked for something to see if they can
21 receive that.

22 Q. What do you understand is covered by
23 the patent pending?

24 A. I have no idea.

25 Q. What jewelry is being advertised in

**EXHIBIT S to Supplemental Declaration
of Gianfranco G. Mitrione
dated July 15, 2005**

1

2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----x

5 CHAMILIA, LLC,

6 v. Plaintiff,
7

04-CV-6017
(KMK)

8 PANDORA JEWELRY, LLC,

9 Defendant.
10 -----x
11

12 CONFIDENTIAL - ATTORNEYS EYES ONLY
13

14 May 13, 2005
15 9:15 a.m.

16
17 Videotaped deposition of LISA WHIRLOW,
18 taken by Defendant, pursuant to notice, at the
19 offices of Lathrop & Gage, 230 Park Avenue, New
20 York, NY 10169, before Lisa Mango, a Shorthand
21 Reporter and Notary Public of the State of New
22 York.
23
24
25

1 Whirlow - Confidential

23

2 usually call me and I try to help them resolve
3 the problems.

4 Q. Okay. You said there are 125 reps. So
5 would that be, as you explained, someone in Cathy
6 Reilly's position?

7 A. Yes.

8 Q. So that could also be called a sub-rep?

9 A. It would be a sub-rep for the group.

10 Cathy Reilly's a sub-rep for Reggie Bowles.

11 Their not sub-reps for me. Whirlow & Associates
12 is a rep group.

13 Q. And how many rep groups are there?

14 A. I think I told you nine.

15 Q. And who are they?

16 A. Wolf Group, BrassSmith, David Philip,
17 Dave Mazzio, Reggie Bowles, Whirlow & Associates
18 Ron Bauman & Associates, Cathy & Company,
19 MarkWest & Associates, North Bay. There's ten
20 actually.

21 Q. What territory does Cathy & Company
22 cover?

23 A. Oh, boy. The middle of the state.

24 Q. The middle of the United States?

25 A. Yes.

Whirlow - Confidential

57

Q. To your knowledge, was Chamilia required to change it's round clasp?

A. Yes.

Q. Who required that?

A. Well, I don't -- actually, when Michael Lund showed up in San Francisco, I had not seen the product of Pandora or Chamilia before the August show. And when Michael Lund showed up and showed me that the products were alike, I made a phone call and said, you know, this is unacceptable. We need to change this line so that it has its own identity.

Q. So it was your decision to change the clasp of the Chamilia chain?

A. I mean, we had discussed changing the line, and then there was the legal action.

Q. So was it your decision to change the lock on the Chamilia chain?

A. I wouldn't say it was my decision.

Q. Whose decision was it?

A. I would say that that was Jeff's decision.

Q. And when was that decision made?

A. Well, I think the decision to change

Whirlow - Confidential

70

harassed to no end.

Q. Words Lovely Words, what have they communicated to you that Pandora representatives have made statements about Chamilia?

A. They're a small business, they were afraid, they didn't want to be involved in any of this. They said that the rep had called and said that they had already had the sheriff go into another store and confiscate the product, just walked in and took it off the shelf. And they were afraid.

Q. And who did you speak with at Words Lovely Words?

A. I don't remember the name.

Q. Who's the owner of Words Lovely Words?

A. I don't remember the name.

Q. And when did you have this conversation?

A. I don't really remember the date.

Q. Was it this year?

A. Yes. No, it was the end of last year.

Q. Did you hear personally the statements made by Pandora representatives to Words Lovely Words?

Whirlow - Confidential

71

A. No.

Q. Has Words Lovely Words shown you any written communications from Pandora representatives regarding Chamilia?

A. No.

Q. Petals & Stems, are they a customer of Chamilia?

A. Yes, and they're not of Pandora.

Q. Does Words Lovely Words sell Pandora?

A. I don't think so.

Q. But you don't know?

A. But I don't know.

Q. Do they carry Chamilia?

A. Yes.

Q. What did Petals & Stems communicate to you of the statements made by Pandora representatives about Chamilia?

A. That the rep came in -- well, I handed you the paper if you wanted it. The rep just wrote me an e-mail yesterday. So we always have to call and try to make the customer feel comfortable after this.

Q. And what does the Petals & Stems store claim the statements were that the Pandora

Whirlow - Confidential

72

representative made to them?

A. The statement that they often say, they're closing us down.

Q. Any others?

A. Any other statements or stores?

Q. Any other statements.

A. That Pandora says?

Q. That Petals & Stems says that Pandora representatives have made to them about Chamilia.

A. That's pretty much it, that they're closing us down.

Q. And were you present when these statements were made by the Pandora representatives to Petals & Stems?

A. No.

Q. Are you aware of any written communications that Pandora representatives have had with Petals & Stems about Chamilia?

A. No.

Q. No?

A. I got the e-mail last night.

Q. So then, no, you're not aware of any written?

A. No.

Whirlow - Confidential

73

Q. And Carrots, what statements do representatives of Carrots claim that Pandora representative made about Chamilia?

A. They were closing us down.

Q. As in us, you refer to Chamilia?

A. Chamilia.

Q. And when were those statements made?

A. Oh, starting -- the statements have continued from when -- from August on non-stop.

Q. When were those statements made to Carrots to the best of your knowledge?

A. Probably in August and September.

Q. August of which year?

A. 2003.

Q. August, September of 2003. And what are the statements that Carrots claimed were made by Pandora representatives?

A. That they were closing us down, that they had a patent.

Q. Did Carrots reference any copyright infringement that Chamilia was alleged to have been committing against Pandora?

A. No.

Q. Have you personally heard statements

Whirlow - Confidential

74

made by Pandora representatives to
representatives of Carrots about Chamilia?

A. No.

Q. Have you ever seen any written
statements made by Pandora representatives to
representatives of Carrots about Chamilia?

A. No.

Q. Claremont Pharmacy, what have they
communicated to --

A. They stopped --

Q. -- about statements made by Pandora
representatives?

A. We were getting closed down because
they had a patent.

Q. And by we, who do you mean?

A. Chamilia.

Q. And did you hear that directly from the
representatives of Claremont Pharmacy?

A. Yes.

Q. And when did you have that
communication?

A. Probably September.

Q. Of what year?

A. '03. They're no longer a customer.

Whirlow - Confidential

87

representatives as you've just described was in early 2004?

A. From her.

Q. You spoke directly with Tina's Hallmark and received that information?

A. Um-hum.

Q. Did you personally hear the statements made by a Pandora representative to Tina's Hallmark about Chamilia?

A. No.

Q. Have you personally heard any statements made by Pandora representatives to Tina's Hallmark that they have a patent?

A. No.

Q. Have you seen any written statements made by Pandora representatives to Tina's Hallmark that they have a patent?

A. No. I --

Q. Have you -- I'm sorry. Go ahead.

A. I have not heard anyone at Pandora say anything to any of these customers. I have not overheard it. I personally heard it from Michael Lund, he told me. And Steve Glueck in the following show in January, Steve Glueck

Whirlow - Confidential

88

personally, he kept walking by our booth. And finally I stopped him and said hi, you know, are you the Pandora rep and he said yes.

Q. Did you personally see any written communications by Pandora representatives to Tina's Hallmark that they were going to shut Chamilia down?

A. No.

Q. In addition to Tina's Hallmark, what other retailers have communicated to you that they have heard statements made by Pandora representatives about Chamilia?

A. So every person I name off you're going to ask me, even though I've told you that they haven't -- I didn't witness it, so we're going to go through the ten questions with each customer?

Q. I'm sorry. I understand you're asking me a question, but you're not really in the position to ask any questions. I'm the one asking questions.

If you could answer the question, I would appreciate it. If you don't understand a question I'm asking you --

A. Well, I mean -- I thought it was just

Whirlow - Confidential

89

easier if I, you know -- let's just save us all a lot of time. I haven't overheard any of these customers. So it's like let's just get to the punch.

You know, these are claims -- these people have called me. But I have not heard, seen any of it. The only two represent -- is Steve Glueck, I've talked to him. And I talked to some girls in the Atlanta gift show at a restaurant who were very nice that were working for Pandora.

Q. And who were they?

A. I don't remember their names.

Q. And how do you know they were working for Pandora?

A. Because they had Pandora T-shirts on and we were in a restaurant and we were all having a nice time, and they were very friendly and very nice.

Q. And what position did they hold with Pandora?

A. They were sales rep.

Q. How do you know that?

A. They had a T-shirt that said Pandora

Whirlow - Confidential

115

Q. Just so the record's clear, my understanding is Pandora representatives made statements to David M. Brian who communicated those statements to Tony Brading, and then Tony Brading communicated those statements to you?

A. Right.

Q. At any time did you communicate those statements to Jeff Julkowski?

A. Probably.

Q. And when was that?

A. Probably when it happened.

Q. Did you communicate to anyone else about these statements?

A. I don't think so.

Q. Other than David M. Brian --

A. I didn't talk to David M. Brian.

Q. Other than David M. Brian, what other retailers?

A. Oh, okay. Linda's Gifts.

Q. And where are they located?

A. California.

Q. And what statements did they claim were made by Pandora representatives about Chamilia?

A. All these people I'm going to give you

Whirlow - Confidential

116

the name, they all had the same statement. You know, they had a patent, they were closing us down. So if that helps any.

And all these people, you know, I did not oversee or hear Pandora.

Whirlow - Confidential

124

Q. Of the names that appear on that piece of paper that you're going to read into the record, do you have knowledge of any written statements that they received by Pandora representatives about Chamilia?

A. I didn't see any of them.

Q. You did not?

A. I mean, it's all -- you know, these are people that come to mind that have either returned their product and no longer customers or have been harassed in some way.

Q. Of the list that you have in front of you, how many communications that were made by Pandora representatives to those individuals did you personally hear?

A. I haven't heard any of them. So I should probably just stop saying the names, huh?

Q. Can you identify a situation where you heard a Pandora representative communicate with one of Chamilia's customers that Chamilia is violating Pandora's patent?

A. I have not heard -- I have -- I have not overheard Pandora reps or Michael Lund talk to anybody. I haven't overheard those

Whirlow - Confidential

125

conversations.

Q. Why don't you, if you could, read the names into the record.

A. Well, I mean --

MR. GOGGIN: Just read them in.

Q. I think you left off at Country Clutter.

A. Yes, I know where I left off.

Classic Duck.

Q. Okay. You can continue.

A. Oh, I can?

Q. Just give the list.

A. Oh, great. Okay. Perfect.

Interiors & More, Fine Things, A Thousand Charms, Forever Charmed, Shad's, Bishop Hallmark, Pamela's, Identity Jewelers, Picket Fence. And I just thought of another one, Richard's Gifts. And --

MR. GOGGIN: Are you still reading from the list.

THE WITNESS: No, I'm not. I've read all the list that I wrote down this morning.

Q. Okay. Before you leave I'd like a copy of the list.

Whirlow - Confidential

132

Q. And was it in connection with the twists that used to appear on the chain that you indicated now don't?

A. I thought it was the top copyright with the beads.

I think the same thing's on everybody's website. You know, Pasha, everybody.

Q. What other function does that twisting device at the end of your bracelet perform other than allowing the beads to attach to the bracelet?

A. Not a lot. I mean, it holds it closed.

Q. Which beads don't have the threading or the twisting mechanism in them?

A. The glass beads.

Q. Any others?

A. No.

Q. Are there any other beads sold by Chamilia which do not have the threading or the twisting design in them?

A. Oh, spacers.

Q. Any others?

A. I don't -- I don't know.

Q. So other than the spacers and the glass

Whirlow - Confidential

133

beads, all other beads screw onto the bracelet in order to --

A. Yes.

Q. In order to be attached.

On your bracelet, can you point to the decorative locks that keep your beads from sliding across the chain as described in paragraph C on page 1 of Pandora 6?

A. This one.

Q. And what is that decorative lock affixed to?

A. That hump I showed you before, the hump.

Q. Without the hump can the decorative lock affix to the bracelet?

A. Well, it will stay on.

Q. So what is the function of the hump underneath the decorative lock?

A. Well, so you can keep them in sections, I guess.

Q. But the decorative locks can be affixed to the bracelet at any point on the chain, correct?

A. They can be put anywhere on the chain.

Whirlow - Confidential

146

want to guess or whether you want to estimate.

THE WITNESS: Oh, I see.

MS. SHORT: Approximate is the word.

MR. GOGGIN: Approximate. And they are two different things. So be clear --

THE WITNESS: I see.

A. A lot of people were customers that aren't customers anymore. So I'm not -- maybe 700, 800.

I really sound like a lousy sales manager. All the stuff I don't know.

Q. If a retail location used to carry Chamilia jewelry products, would their name still appear on your customer list?

A. Quite possibly.

Q. Do you know whether they would or would not?

A. I have heard that people are on there that have gone on there that aren't still carrying Chamilia.

Q. And how have you heard that?

A. I've heard that from -- I'm not quite sure. Either reps -- I have heard that, but I

Whirlow - Confidential

154

MR. GOGGIN: She just said she --

A. I gave you a couple. I mean, I gave you, you know, a couple of them. A stone falls out.

Q. No, that's when you explained that a product was damaged. I'm asking what your experience is with a defective jewelry product.

A. I mean, it's just the buzz word. You write damaged and defective merchandise. Love Letters, Jewelry John, all the companies, you know, guarantee -- it's just the way you write it.

Q. But then there's nothing defective that you've received as a return from customers?

A. I'm sure there is.

Q. Then what are those situations?

A. You know, it's maybe something's not right with it. I don't -- you know.

Q. And what about it wouldn't be right that would make it defective?

A. That it might not go on the bracelet.

Q. Why wouldn't it go on the bracelet?

A. Because it would be defective.

Q. What about the bead would be defective

Whirlow - Confidential

155

that wouldn't allow it to attach to the bracelet?

MR. GOGGIN: This is all speculation.

I object to this questioning.

MS. SHORT: I asked for examples and she's providing me examples of situations --

MR. GOGGIN: Of what might be?

MS. SHORT: Court reporter, could you read back the entire exchange, please.

(Record read)

A. I mean, the hole could be too small.

Q. Have you seen that with Chamilia beads?

A. That the hole's too small?

Q. Um-hum.

A. I don't really -- I mean, I've seen a pile of stuff that came back. I don't go look at it. I don't care.

Q. But have you?

A. No.

Q. So what product have you received as a return from a customer that has been defective?

A. I personally don't do returns. I'm not involved in that. So I don't think I personally have taken anything back.

Q. What have your sales reps communicated

Whirlow - Confidential

156

to you that customers have returned based on a product sold by Chamilia being defective?

A. Well, if it's defective, I tell them, you know, to take care of it.

Q. And what about the jewelry product was defective?

MR. GOGGIN: Asked and answered.

A. I mean, it's like I don't get involved in that. I mean, it's like I do other things. I mean, it's like -- I want them to take care of the customers and make the customer happy.

Q. Have you ever had situations where a customer returned a bead because it was unable to thread onto the bracelet?

A. To me, no. I --

MR. GOGGIN: If you don't know, say you don't know.

Q. Do you have knowledge of a situation where a customer returned a bead and it was --

A. I'm sure these things have happened. But do I have exact knowledge of these certain situations, no.

Q. Are you aware of any situation where a customer returned a Chamilia jewelry product

Whirlow - Confidential

157

because a bead was unable to be removed from the bracelet because it was stuck?

A. Yes, I do know that.

Q. Would you call it a defect?

A. I mean, we would characterize it as a defect. But whether or not the customer hit the bead and damaged it, we cover it. But how it actually happened -- it went on there at one point and it was fine. So I think that there was some damage done to it, but we still cover it.

Q. But that would be a defect if a bead was stuck on --

A. That would come under damage and defect. So, I mean, your interpretation of damage and defect, I don't analyze it all that much.

Q. I'm just asking for your understanding.

A. I know.

Q. Who do you consider to be competitors of Chamilia?

A. Pandora.

Q. What makes Pandora a competitor of Chamilia?

A. Well, what I say to people is, at a

Whirlow - Confidential

180

A. They may have one, but I haven't seen it.

Q. Have you ever prepared a chart or other document which would show an anticipated projection of sales?

A. No.

Q. Has Chamilia ever held a sales meeting?

A. Yes.

Q. When have they held a sales meeting?

A. I had a sales meeting in January in Atlanta.

Q. January of which year?

A. '04.

Q. Who was present at the sales meeting?

A. Oh, gosh. Just mostly rep principals and a few reps. It wasn't a very big one.

Q. How many people total were present at the meeting?

A. Maybe 15.

Q. Who organized the meeting?

A. I did.

Q. How did you go about organizing it?

A. I had the showroom group get me a room to have a small meeting and asked everyone to

Whirlow - Confidential

202

Chamilia customers by Pandora representatives at that Texas 2004 gift show?

A. No, they weren't there, so they wouldn't -- I don't think they were there.

Actually, Avery's is the store out of Texas that's a chain and there are, you know, various locations.

Q. Have you received any e-mails from Chamilia customers indicating a discontinuance of sale of Chamilia jewelry products as a result of statements made by Pandora or it's representatives?

A. Have customers -- customers haven't e-mailed me, no. Customers --

Q. Have you received any written communications from your customers indicating a discontinuance of sale of Chamilia jewelry products as a result of statements made by Pandora?

A. No. Retailers really aren't up on e-mails. A lot of them don't use e-mail. I know it's hard for you guys in your profession because everybody's e-mail freaks. But in the retail industry they're really not -- you know, it's --

Whirlow - Confidential

203

they're really not into the e-mail. They're starting to get. So they use the telephone to communicate.

Q. As the national sales manager for Chamilia, have any of the hundred or so sales representatives of Chamilia forwarded on to you any written correspondence they've received from their customers which indicate a discontinuance of sale of Chamilia jewelry products as a result of any statements made by Pandora?

A. If I get an e-mail, it'd be like the one I showed you today. That's from the rep stating a conversation. But nobody has given me copies of something that a retailer has written, that I can think of.

Q. That would be whether it's a letter or a fax?

A. Right.

Q. Or an e-mail?

A. Correct.

Q. I need to ask you some more questions about your attendance at that January 2005 gift show.

A. Okay.

Whirlow - Confidential

215

meaning of the term knock-off without using the word in providing me with your understanding of it's meaning?

A. Well, they see a product or an item and then they make something similar or like.

Q. Have you ever heard a Chamilia product being described as a knock-off?

A. Um-hum.

Q. And when have you heard that?

A. I have heard that through customers saying that, you know, Pandora said that.

Q. Have you ever personally heard a Pandora representative describe a Chamilia product as a knock-off?

A. No.

Q. Would you describe the Chamilia jewelry products being sold in the fall of 2003 as knock-offs of Pandora jewelry products sold at that time?

A. Yes.

Q. Do you know what a patent is?

A. Yes.

Q. What is it? What is your understanding?

Whirlow - Confidential

234

Pandora representatives concerning Chamilia?

A. Cathy Reilly, she had a conversation I think at the Chicago show with a Pandora rep. They also repped the same line, another mutual line. And Cathy Reilly introduced herself and said, oh, you know, I rep Chamilia. And the woman turned on her instantly and was very rude.

I don't -- the woman told Cathy that they were shutting us down. I don't remember the woman's name. And Cathy tried to be friendly. But the woman was very rude.

Q. When did Cathy Reilly tell you this?

A. When it happened.

Q. Do you remember when that was?

A. At one of the shows. I think it was the summer show last season, '04.

Q. Have you ever heard a Pandora representative describe Chamilia jewelry products as inferior or shoddy quality merchandise?

A. To me, no. Not to me.

Q. You've never witnessed a Pandora representative communicate that to anyone else, have you?

A. No.

Whirlow - Confidential

235

Q. Have you ever seen any advertising or marketing materials by Pandora which reference Chamilia?

A. No.

Q. Have you ever personally heard a Pandora representative communicate to Chamilia customers that Pandora will sue Chamilia for millions of dollars in damages?

A. Have I ever heard Pandora say that? No.

Q. To a customer in your presence?

A. Oh, no, no. I never heard Pandora talk to any customers.

Q. Have you ever personally witnessed a Pandora representative threatening a Chamilia customer?

A. No.

Q. Have you ever heard of the e-mail address Jvinba@ValorNet.com? Does that e-mail address sound familiar?

A. May I see it?

Q. Sure. I now hand the witness what has been marked as Plaintiff Exhibit 6.

A. It doesn't ring a bell.

**EXHIBIT T to Supplemental Declaration
of Gianfranco G. Mitrione
dated July 15, 2005**

Verrill Dana LLP

Attorneys at Law

COPY

JAMES G. GOGGIN
 PARTNER
 jgoggin@verrilldana.com
 Direct Dial: 207-253-4602
 Direct Fax: 207-253-4603

ONE PORTLAND SQUARE
 PORTLAND, MAINE 04112-0586
 207-774-4000 • FAX 207-774-7499

June 9, 2005

VIA FACSIMILE & FEDERAL EXPRESS

Honorable Kenneth M. Karas
 United States District Court
 Southern District of New York
 500 Pearl Street, Room 920
 New York, NY 10007

Re: Chamilia, LLC v. Pandora Jewelry, LLC
 Civil Action No. 04-CIV-06017 (KMK) (ECF Case)

Dear Judge Karas:

This is to briefly respond to Pandora's letter of June 6, 2005 regarding the production of the "Pandora, LLC's terms and condition letters". We seek any of these letters that were signed by customers or that indicate with an address to whom they were sent. Without repeating the arguments I made in our telephone conference, our discovery request was for any documents which refer to Chamilia. I have attached as Exhibit A an excerpt from the deposition of Michael Lund Petersen in which he states that the manufacturers referred to in the September 16, 2004 letter include Chamilia. (Page 28, lines 19-25).

As for relevance, we are not contending that this agreement by itself violates the antitrust law, but rather that this relates to Pandora's misrepresentations about intellectual property rights. The letter itself refers to pending published patent applications, and further states that Pandora is "aggressively pursuing those who infringe on our intellectual property rights". The letters are relevant to the allegation in Paragraph 21 that says that "Defendant has made statements to Plaintiff's customers and potential customers advising them not to purchase products from Plaintiff because the Defendant has asserted patent rights." When combined with oral statements made by Pandora and its sales representatives to customers that Pandora has a patent, that Pandora will "shut down Chamilia", that Pandora would impound Chamilia inventory and sue for any profits realized by the retailers from the sale of Chamilia's products, the letters can be seen as part of the scheme that constitutes tortious interference with advantageous relationships alleged in Count VI and unfair competition alleged in Count VII of the Plaintiff's Complaint. Plaintiff is entitled to know who has signed these letters, and when, and as evidence that customers have declined to make additional purchases of Plaintiff's products as alleged in Paragraph 53 of the Complaint, or who have breached their contracts by canceling purchase

Honorable Kenneth M. Karas
June 9, 2005
Page 2

orders or have communicated their intention not to purchase products in the future as alleged in Paragraph 56 of the Plaintiff's Complaint.

In addition, these agreements are referred to in the Steve Glueck letter, provided to you as Exhibit 5 to Mr. Hansen's letter, where Mr. Glueck says "as you all know, we have an agreement with you not to carry the knock-off companies, as we had outlined in our terms and conditions policy". These letters are also evidence that people have chosen not to do business with Chamilia because of allegations made by Pandora about knock-off jewelry, which are relevant to our Lanham Act Claim in Count I, Defamation Claim in Count VI, Business-Product Disparagement in Count V, as well as the previously mentioned tortious interference and unfair competition claims.

Finally, these letters are also relevant to prove the dollar amount of damages suffered by the Plaintiff, and might lead to additional discoverable information in the form of witness interview of the people who signed them.

Sincerely,



James G. Goggin

JGG/sms
Enclosures
cc: William R. Hansen, Esq.
Dylan Smith, Esq.
Troy Sargent
P:\jgoggin\chamilia\karas.4ltr.doc